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7 **UNITED STATES DISTRICT COURT**
8 **DISTRICT OF NEVADA**
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10 FEDERAL DEPOSIT INSURANCE
11 CORPORATION, as receiver of Silver
State Bank,

12 Plaintiff,
13 v.
14 COREY L. JOHNSON, *et al.*,
15 Defendants.

Case No. 2:12-CV-00209-KJD-PAL

ORDER

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17 Before the Court is Defendants Corey L. Johnson *et al.*'s ("Defendants") Motion to Dismiss
18 Amended Complaint Pursuant to FRCP 12(b)(1) (#130). Plaintiff Federal Deposit Insurance
19 Corporation ("Plaintiff" or "FDIC") responded (#131) and Defendants replied (#132). Also before
20 the Court is Plaintiff's First Motion for Leave to File Sur-Reply or in the Alternative a Request for
21 the Court to take Judicial Notice (#134). Defendants responded (#135) and filed a Countermotion to
22 Strike Plaintiff's First Motion for Leave to File Sur-Reply or in the Alternative a Request for the
23 Court to Take Judicial Notice (#136).

24 **I. Background**

25 The question before the Court revolves around the relationship between the "corporation" and
26 "receiver" arms of the FDIC. Originally, FDIC, acting as receiver for Silver State Bank, sought

1 approximately \$86 million in damages from Defendants for losses due to various loans etc. (#1).
 2 However, FDIC filed an Amended Complaint seeking additional compensation of approximately
 3 \$500 million for losses related to the Federal Deposit Insurance Fund (“Fund”) (#121). Exactly how
 4 those losses are related to the Fund is likely dispositive of the Motions before the Court.

5 Defendants maintain that there are two separate entities within the FDIC, and Plaintiff
 6 concedes “there is a distinction between the two,” the Corporation (“FDIC-C”) and the Receiver
 7 (“FDIC-R”) (#131; 3). Importantly, FDIC-R is the Plaintiff in this case. Defendants allege that as the
 8 Fund belongs to FDIC-C and not FDIC-R, FDIC-R lacks standing to bring a claim for losses to the
 9 Fund because FDIC-R is asserting a third-party’s interests. Plaintiff, FDIC-R, responds that it is
 10 “obligated” to repay the Fund (via the FDIC-C) those monies distributed to depositors, and that while
 11 losses to the Fund are one correct measure of damages, the damages are actually to the FDIC-R and
 12 not to the Fund.

13 II. Conclusion

14 Given the complexity of this issue and lack of citations for crucial assertions, the Court
 15 **HEREBY ORDERS** additional briefing on the following four questions. Briefing beyond the four
 16 questions listed above will be disregarded. Defendants will have two weeks from the entry of this
 17 Order to file their brief, Plaintiff will have two weeks from Defendants’ filing to file its response, and
 18 Defendants will have one week from Plaintiff’s filing to file their reply.

19 1. What is the precise relationship between the Fund’s losses and the claims asserted by
 20 Plaintiff?
 21 2. Is Plaintiff legally required to repay the Fund for losses a) in any case, b) in this case?
 22 3. What is the relevance and effect of subrogation as to Plaintiff’s claims?
 23 4. Why is the FDIC-R alone seeking damages related to losses to the Fund, rather than jointly
 24 with the FDIC-C?

25 The Court notes that the parties have already briefed all but question four, and that the
 26 briefing was inadequate. The Court urges all parties to place utmost priority on clarity of argument

1 supported by meticulous citations. The Court also reminds the parties that clarity of argument
2 requires pithy and incisive analysis, and cannot be achieved by circumlocution. To paraphrase Oliver
3 Wendell Holmes, Jr., the Court has no use for the simplicity this side of complexity; it is the
4 simplicity on the other side of complexity that marks the skilled advocate. See Gregory C. Pingree,
5 Where Lies the Emperor's Robe? An Inquiry into the Problem of Judicial Legitimacy, 86 Or. L. Rev.
6 1095, 1104 n.24 (2007).

7 Given this Order for further briefing, Plaintiff's Motion for Leave to File Sur-Reply (#134)
8 and Defendants' Motion to Strike (#136) are **HEREBY DENIED** as moot.

9 DATED this 26th day of September 2013.

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Kent J. Dawson
United States District Judge